



1998), involved an offense for which the culpable mental state was not specified in the violated statute of count two, which distinguishes it from the instant case. Because the charged statute in count two specified a particular mental state, i.e., “knowing,” merely referencing the statute in the indictment will generally not suffice in terms of alleging all essential elements, including scienter. Marshall, 870 S.W.2d at 537; State v. Brandon Wilson, No. 03C01-9609-CC-00352, Blount County (Tenn. Crim. App. filed September 1, 1998, at Knoxville). Thus, unlike the majority in this case, I do not find support in Dykes and would instead conclude that count two of the indictment failed to sufficiently allege scienter, an essential element of delivery of cocaine, which is included in the statute. As such, I would reverse and dismiss the conviction on count two.

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JOHN H. PEAY, Judge